

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 997 Student Discipline and School Safety

SPONSOR(S): Carroll and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 1540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Policy Committee	11 Y, 0 N, As CS	Duncan	Ahearn
2) Public Safety & Domestic Security Policy Committee			
3) Education Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Federal law, through the Gun-Free Schools Act, requires each state receiving federal funds under the Elementary and Secondary Education Act to have in effect a state law requiring local education agencies (school districts) to expel from school for a period of not less than one year a student who is determined to have brought a firearm to a school or to have possessed a firearm at school. Florida meets the federal Gun-Free Safety Act requirements through the provisions in current law relating to zero tolerance for crime and victimization which require school districts to adopt zero-tolerance policies for crime, substance abuse, and the victimization of students.

In July 2007, Governor Charlie Crist authorized the creation of the Blueprint Commission charged with developing recommendations to reform Florida’s juvenile justice system. The commission issued its report in January 2008. Many of the provisions in the bill are in response to the findings and recommendations of the commission.

This bill requires district school boards to revise their zero tolerance policies so that they define: criteria for reporting acts to law enforcement, acts that pose a serious threat to school safety, and petty acts of misconduct. District school boards must also establish a procedure that ensures each student has the opportunity to appeal disciplinary action. For any disciplinary or prosecutorial action, school district zero tolerance policies must consider the individual student and the particular circumstances surrounding his or her misbehavior.

The bill requires district school boards and local law enforcement to establish agreements to specify guidelines for offenses that pose a serious threat to school safety and to report such offenses to law enforcement. The bill provides that zero tolerance does not require reports to law enforcement of petty misconduct and misdemeanors, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray, theft of less than \$300, trespassing, and vandalism of less than \$1,000. School districts are encouraged to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.

The bill also requires a district school board that has a policy of allowing the use of corporal punishment as a form of discipline to review its policy on corporal punishment once every 3 years during a district school board meeting. Public testimony must occur at the board meeting, and if the board meeting is not held, then the portion of the district school board’s policy which allows corporal punishment will expire.

This bill appears to have a fiscal impact on state and local government expenditures; however, the amount cannot be determined at this time. See FISCAL COMMENTS section of this analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal Law: Gun-Free Schools Act

Federal law, through the Gun-Free Schools Act (GFSA), requires each state receiving federal funds under the Elementary and Secondary Education Act to have in effect a state law requiring local education agencies (school districts) to expel from school for a period of not less than one year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at school. The state law must allow the chief administering officer of the school district to modify, in writing, the expulsion requirement for a student on a case-by-case basis.¹

The law also provides that funds will not be made available to school districts under any title of the Elementary and Secondary Education Act unless the school districts have a policy that requires referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by the school district.²

State Law: Zero Tolerance for Crime and Victimization

Florida meets the federal GFSA requirements through the provisions in current law relating to zero tolerance for crime and victimization which require school districts to adopt zero-tolerance policies for crime, substance abuse, and the victimization of students.³ The policy must require students found to have: (a) brought a firearm or weapon⁴ to school, to any school function, or onto any school-sponsored transportation or possessed a firearm at school; or (b) made a threat or false report,⁵ involving school or school personnel's property, school transportation, or a school-sponsored activity, to be expelled, with or without continuing education services, from the student's regular school for a period of not less than one full year and to be referred to the criminal justice or juvenile justice system.⁶

¹ The Gun-Free Schools Act was reauthorized by Title IV, Part A, Subpart 3, Section 4141 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001(NCLB; Public Law 107-110). See <http://www.ed.gov/policy/elsec/leg/esea02/index.html>

² *Id.*

³ s. 1006.13(1), F.S.

⁴ s. 790.001(6) and (13), F.S., define "firearm" and "weapon."

⁵ s. 790.162, F.S., and s. 790.163, F.S.

⁶ s. 1006.13(2), F.S.

The law does permit district school superintendents to consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a disciplinary program or second chance school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system.

Each district school board must enter into agreements with the county sheriff's office and local police department specifying the procedures and guidelines for ensuring that school personnel properly report delinquent acts and crimes to law enforcement and that all no contact orders entered by the court are enforced.⁷ These requirements are implemented through guidelines in cooperative agreements between school boards, law enforcement, and the Department of Juvenile Justice (DJJ).⁸ The agreements must include the role of school resource officers, if applicable, in handling reported incidents and special circumstances in which school officials may handle incidents without filing a report to law enforcement.⁹

The State Board of Education lists nine offenses which subject a student to the most severe disciplinary action provided for by school board policy and provides that all of these offenses must be reported to local law enforcement agencies.¹⁰ School districts must ensure that appropriate due process procedures are followed prior to taking disciplinary action and that discipline is administered in an equitable manner. District school boards are permitted to assign more severe consequences than normally authorized for violations of the Code of Student Conduct.¹¹

Code of Student Conduct

District school boards are required to provide for the proper accounting of students, the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.¹² As part of meeting this requirement, each district school board must adopt a code of student conduct¹³ that includes consistent policies and specific grounds for disciplinary action, including in-school suspension, out-of-school suspension, expulsion, and any disciplinary action that may be imposed for the possession or use of alcohol on school property or while attending a school function, or for the illegal use, sale, or possession of controlled substances. The code must also provide notice that certain offenses are grounds for disciplinary action and may result in the imposition of criminal penalties.¹⁴

Corporal Punishment

Corporal punishment of a public school student may only be administered by a teacher or school principal within the guidelines set by the school principal and in accordance to district school board policy. Another adult must be present and must be informed, in the student's presence, of the reason for the punishment. Upon request, the teacher or school principal must provide the parent with a written explanation of the reason for the punishment and the name of the other adult who was present.¹⁵

⁷ s. 1006.13(3), F.S.

⁸ Each district school board must negotiate a cooperative agreement with the Department of Juvenile Justice (DJJ) on the delivery of educational services to youths under the jurisdiction of the DJJ. *See* s. 1003.52(13), F.S.

⁹ s. 1006.13(2), F.S.

¹⁰ The nine offenses are: homicide (murder, manslaughter); sexual battery; armed robbery; aggravated battery; battery or aggravated battery on a teacher or other school personnel; kidnapping or abduction; arson; possession, use, or sale of any firearm; or possession, use, or sale of any explosive device. *See* Rule 6A-1.0404, F.A.C.

¹¹ Rule 6A-1.0404, F.A.C.

¹² s. 1006.07, F.S.

¹³ s. 1006.07(2), F.S.

¹⁴ *Id.*

¹⁵ s. 1002.20, F.S.

In July 2007, Governor Charlie Crist authorized the creation of the Blueprint Commission charged with developing recommendations to reform Florida's juvenile justice system. The commission issued its report in January 2008.¹⁶

The commission reported the following:

Finding

Zero tolerance laws and policies were intended to target more serious offenses involving weapons, drugs, or violent acts. Schools have expanded their use to include other less serious offenses and behaviors, resulting in large numbers of youth being referred to the juvenile justice system.¹⁷

Recommendations

The Children and Youth Cabinet¹⁸ direct the Department of Education, law enforcement, school superintendents and the DJJ to partner to review and amend K-12 zero tolerance policies and practices to eliminate the referral of youth to DJJ for misdemeanor offenses. Ensure policies and practices are consistent with the original legislative intent of the zero tolerance laws targeting serious violent offenses, while developing alternatives that promote youth accountability while avoiding suspension and other punitive options.

Amend s. 1006.13, F.S., to prohibit the unjust application of zero tolerance, clearly stating that zero tolerance shall not be applied to petty acts of misconduct and misdemeanors. Discipline and/or prosecution should be based on considerations of the individual student and the particular circumstances of misconduct. School districts should involve law enforcement only for serious offenses that threaten school safety. Alternatives to expulsion or referral for prosecution should be developed that will improve student behavior and school climate without making schools dangerous.¹⁹

Effect of Proposed Changes

This bill provides that it is the intent of the Legislature to promote a safe and supportive learning environment in schools and to encourage schools to use alternatives to expulsion or referral to law enforcement. In addition, the bill states that zero tolerance policies should apply equally regardless of economic status, race, or disability.²⁰

The bill requires district school boards to revise their zero tolerance policies so that they define: criteria for reporting acts to law enforcement, acts that pose a serious threat to school safety and petty acts of misconduct. Since there are 67 school districts with varying demographics and interpretations, these criteria will not ensure uniformity among the zero tolerance policies.

¹⁶ <http://www.djj.state.fl.us/blueprint/index.html>, Report of the Blueprint Commission, Florida Department of Juvenile Justice, *Getting Smart About Juvenile Justice in Florida*, January 2008.

¹⁷ In 2006-2007, DJJ received 146,765 referrals. Of that amount, 16% (22,926) of these referrals to the DJJ came from Florida's schools and 66% (15,266) of the 22,926 referrals were for misdemeanors, the most common being disorderly conduct and misdemeanor assault and battery (fighting). See <http://www.djj.state.fl.us/blueprint/index.html>, Report of the Blueprint Commission, Florida Department of Juvenile Justice, *Getting Smart About Juvenile Justice in Florida*, January 2008.

¹⁸ Governor Charlie Crist created the Children and Youth Cabinet in 2007. The cabinet consists of 20 members and will coordinate state agencies and programs that deliver children's services. See http://www.flgov.com/youth_cabinet_background.

¹⁹ <http://www.djj.state.fl.us/blueprint/index.html>, Report of the Blueprint Commission, Florida Department of Juvenile Justice, *Getting Smart About Juvenile Justice in Florida*, January 2008.

²⁰ The Individuals with Disabilities Education Act (IDEA) includes provisions governing discipline procedures for students with disabilities. See 34 C.F.R. § 300.530-535; see also

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CTopicalBrief%2C6%2C>.

District school boards must also establish a procedure that ensures each student has the opportunity to appeal disciplinary action. For any disciplinary or prosecutorial action, school district zero tolerance policies must consider the individual student and the particular circumstances surrounding his or her misbehavior. Current law requires district school boards to adopt rules for the control, discipline, in-school suspension, and expulsion of students and decide all cases recommended for expulsion. The provisions governing both suspension and expulsion hearings are also provided in current law.²¹ The bill provides that school districts are encouraged to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.

Current law requires district school boards to enter into agreements with local law enforcement for reporting felonies and violent misdemeanors, whether committed by a student or an adult, and delinquent acts that would be felonies or violent misdemeanors if committed by an adult.²² The bill revises this provision by requiring school districts to enter into agreements with local law enforcement for reporting acts that pose a serious threat to school safety whether committed by an adult or a student.

The bill provides that zero tolerance does not require reports to law enforcement of petty misconduct and misdemeanors, including, but not limited to, disorderly conduct, disrupting a school function, simple assault or battery, affray,²³ theft of less than \$300, trespassing, and vandalism of less than \$1,000.

While these provisions may reduce the number of referrals to the DJJ, they do not ensure the reduction of petty misconduct and offenses occurring at schools.

School districts determine whether an offense is a petty act of misconduct and misdemeanor and this determination is not part of the agreement entered into with local law enforcement. While the bill provides examples of this type of misconduct such minor fights or disturbances, it does not provide a clear definition of petty offense which raises concern.

B. SECTION DIRECTORY:

Section 1: Amends s. 1002.20, F.S., relating to K-12 student and parent rights.

Section 2: Amends s. 1006.09, F.S., relating to duties of school principals relating to student discipline and school safety.

Section 3: Amends s. 1006.13, F.S., relating to district school board zero tolerance policies for crime and victimization.

Section 4: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

See FISCAL COMMENTS section.

²¹ s. 1006.07(1), F.S.

²² s. 1006.13(3), F.S.

²³ "Affray" means a fight between two or more people in a public place that disturbs the peace. Merriam-Webster Dictionary.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DOE Comment:

The terminology alignment would also result in extensive review and revisions to data collection systems for agencies (DJJ, FDLE and FDOE) and school districts. This will create a fiscal impact, as there will be an increase in costs to FDOE and school districts to make modifications to their individual systems.²⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There is no new rulemaking authority, but the State Board of Education may adopt rules under the existing statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOE Comments:

Definitions of examples of petty acts of misconduct and misdemeanors vary greatly among the Department of Juvenile Justice (DJJ), the Florida Department of Law Enforcement (FDLE) and FDOE. The use of "petty" to define lower-level acts could be more clearly defined to alleviate confusion.

FDOE is in agreement with the need for the establishment of consistent terms between DJJ, FDLE and FDOE. However, the unintended consequences of aligning these definitions might result in more student offenders being directed immediately into the criminal justice system, which previously would not have been.

²⁴ Department of Education, Bill Analysis of HB 997, March 13, 2009.

Initially, the margin of error in data reporting by school districts to FDOE will likely increase.

FDOE will be incurring the responsibility for making the changes to training, tools and materials for district training on incident and discipline reporting.

The provision “zero-tolerance policies must apply equally to all students regardless of their disability “ may raise some concern given specific provisions in the Individuals with Disabilities Education Act regarding discipline of students with disabilities, requirements for conducting manifestation determinations and provision of interim alternative educational setting.²⁵

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the PreK-12 Policy Committee adopted one amendment to HB 997 and reported the bill favorably as a Committee Substitute (CS). The differences between the CS and the House Bill are as follows:

- The CS corrects a cross-reference relating to K-12 student and parent rights. HB 997 did not include this cross-reference; HB 997 does not.
- The CS requires a district school board that has a policy of allowing the use of corporal punishment as a form of discipline to review its policy on corporal punishment once every 3 years during a district school board meeting. Public testimony must occur at the board meeting, and if the board meeting is not held, then the portion of the district school board’s policy which allows corporal punishment will expire. This provision was not included in HB 997.
- The CS provides that district school boards must adopt zero tolerance policies that minimize the victimization of volunteers. HB 997 did not include volunteers in this provision.
- The CS clarifies that zero tolerance policies must also establish a procedure for review of a disciplinary action taken against a student as imposed under s. 1006.07, F.S. This provision did not include a reference to s. 1006.07, F.S., in HB 997.

²⁵ *Id.*